

CHAPTER 3 CERTIFICATION FOR CONSTRUCTION - RELATED SERVICES

3.1 RELATED STATUTORY AUTHORITY

- A. SC Law Section 10-1-180 establishes the State Engineer as the Building Official for state construction.
- B. SC Law Section 11-35-540 permits the Board to promulgate regulations, to approve agencies' internal operational procurement procedures and to audit and monitor agencies' procurement procedures.
- C. SC Law Section 11-35-845 permits agencies with total management capabilities to oversee the administration of permanent improvement projects with the Office of State Engineer serving as an audit function.
- D. SC Law Section 11-35-1550 authorizes any agency to conduct its own procurement under \$5,000 in actual or potential value under its own authority in accordance with the procurement code.
- E. SC Law Section 11-35-1210 permits the Board to certify agencies to make direct procurements not under term contract and within assigned dollar limits.
- F. SC Law Section 11-35-1220 permits the Office of General Services to require that all public procurements be reported on forms prescribed by the Chief Procurement Officers.
- G. SC Law Section 11-35-1230 requires the Office of General Services to audit and provide fiscal reporting.
- H. SC Law Section 11-35-3220 requires the State Engineer to approve all design professional selections except those procured in response to emergency or sole source declarations.
- I. SC Regulation 19-445.2015 defines unauthorized procurements and the process by which such procurements are to be ratified.

3.2 RELATED OSE FORMS

The following OSE standard forms are referred to in this Chapter. Reproducible copies of these forms may be found in the Appendix indicated.

- A. Form SE-260, *Request for Authority to Amend a Professional Services Contract*, which may be found in Appendix A.
- B. Form SE-380, *Request for Authority to Execute a Construction Contract*, which may be found in Appendix C.
- C. Form SE-480, *Construction Change Order*, which may be found in Appendix B.

3.3 DELEGATION OF BUILDING CODE ENFORCEMENT AUTHORITY

A. GENERAL

- 1. The State Engineer, by virtue of the authority granted in SC Law Section 10-1-180, functions as the Building Official for state construction, including the enforcement of the codes and standards listed in Chapter 5. The International Building Code (IBC) authorizes the Building Official to delegate specific duties and responsibilities for enforcement of the provisions of the IBC to others and to establish policies and procedures related to this delegation of authority.
- 2. Agencies acting within their level(s) of construction certification, exercise the authority of the State Engineer, and accept the responsibilities implicit in that authority. Agencies should carefully review Chapter 1 of the International Building Code for more information regarding the duties, authorities and responsibilities of a building official.
- 3. An Agency may request authority to self-perform reviews of the Agency's construction project drawings and specifications for conformance with the requirements of the International Building Code and the technical codes and standards referenced therein, and this Manual. The request shall

be evaluated considering the Agency's project workload and the availability of sufficient and qualified employees that can be dedicated to the review process.

- (a) For currently certified agencies, this request should be submitted through the MMO Audit and Certification Group during the time of the recertification audit.
- (b) For agencies operating under a Basic level of certification (see paragraph 3.4), this request may be submitted to the Audit and Certification Group at any time.

B. DELEGATION POLICIES AND PROCEDURES

1. An Agency's request for authority to self-perform building code reviews of the Agency's construction project drawings and specifications must be supported by the information described in this Chapter.
2. The staff performing the reviews shall have sufficient training and experience to demonstrate an understanding in the application of the requirements of the IBC, the technical codes and the referenced standards and this Manual as it relates to the technical requirements for the design and construction of state buildings and facilities.
3. A reference library of the applicable codes and standards shall be readily available for use by the review staff.
4. The Agency review staff is responsible for compliance with the technical requirements of the Manual as issued by the Office of State Engineer and with all applicable Codes, Standards, Statutes and Regulations.
5. The agency review staff shall limit its code review and inspection to its area(s) of expertise. Consultation with the OSE is required for areas outside of the agency's area(s) of technical qualifications.
6. The review staff is not delegated the authority to act on an requests for modification of the IBC and related code/standard requirements, nor for the approval of alternative methods of compliance, nor for approval of performance-based design. Such requests, along with any requests for waiver of the Manual requirements, and requests for interpretations of policies or directives related to construction procurement procedures shall be referred to the State Engineer, who reserves the authority to evaluate such requests and make such determinations on the proper application and/or interpretations.
7. The delegation of authority for building code enforcement is documented in writing from the State Engineer to the agency's lead reviewer and is normally valid for a three-year period coincident with the agency's construction procurement certification.
8. The satisfactory performance of the Agency's review staff during the previous 36-month period and the projected project workload shall be factors in granting a renewal of the Agency's code review authority. The State Engineer may audit bid package plans and specifications submitted by the Agency at the time each project is released for bid, by on-site over-the-shoulder reviews, by random observation by representatives of the State Engineer, or by audit of contract documents resulting from solicitations that are issued by the Agency.

3.4 DELEGATION OF CONSTRUCTION PROCUREMENT AUTHORITY

- A. Any agency may procure construction services valued at \$5,000 or less under its own authority and in accordance with this Manual, with the exception of design professional (or A/E) services. Design professional services must be procured in accordance with Chapter 4 of this Manual. This is referred to as the Basic level of certification.
- B. Under Section 11-35-1210 of the Procurement Code, the Office of General Services may recommend to the Board that an agency receive the authority to make direct procurements above the Basic level of \$5,000. For construction certification, the Materials Management Office evaluates the agency for knowledge and performance related to administration of the Procurement Code and the General Conditions of the Construction Contract.

- C. Construction procurements within the agency construction certification shall be the complete responsibility of that agency.
 - 1. The procurement activities shall adhere to all laws and regulations governing construction procurement and to the requirements of this Manual, including review of construction documents for compliance with the building and other codes specified in this Manual.
 - 2. Only contract forms approved by the OSE may be used to procure construction and design professional services.
 - 3. Audits may be performed by Board representatives to assist the agency and to monitor compliance with these standards.
- D. Construction procurements exceeding the agency construction certification shall be monitored and approved by the Office of State Engineer (OSE) in compliance with procedures and standards presented in this Manual.
- E. All construction related professional services procurements require review and approval by the State Engineer, regardless of dollar value.
- F. Agency Approving Authorities
 - 1. The agency approving authority who approves OSE forms shall be the head of the agency or a designee. To expedite submission of forms to the OSE, it is suggested that agency approving authority be delegated to someone with the responsibilities of a Director of Engineering and Planning.
 - 2. The agency approving authority who signs the contracts shall be the head of the agency or a designee; however, this designee does not need to be the same as the person authorized to approve OSE forms.
 - 3. The agency shall submit the names of agency's approving authorities to the OSE when first appointed and upon any change.

3.5 LEVELS OF CERTIFICATION

- A. Construction certification is subdivided into four elements and may be granted at one of the standard levels listed in Table 3.5-1.
- B. Agencies with a documented need may be granted other levels of certification for specific elements.

Table 3.5-1. LEVELS OF CONSTRUCTION PROCUREMENT CERTIFICATIONS				
Certification Level	A/E Contract Award	A/E Contract Amendment¹	Construction Contract Award	Construction Contract Change Order²
Basic	None	\$5,000	\$5,000	\$5,000
I	None	\$5,000	\$25,000	\$25,000
II	None	\$10,000	\$50,000	\$50,000
III	None	\$15,000	\$100,000	\$100,000
IV	None	\$25,000	\$250,000	\$250,000
V	None	\$50,000	\$500,000	\$500,000
¹ These limits apply to individual items of work, not the aggregate value shown on the SE-260. See Chapter 4 for more information on amendments to A/E contracts.				
² These limits apply to individual items of work, not the aggregate value shown on the SE-480. See Chapter 7 for more information on change orders to construction contracts.				

3.6 CERTIFICATION REQUEST PROCEDURES

- A. All construction certifications over the \$5,000 Basic level are granted by the Board, acting on a favorable recommendation from the Office of General Services.

B. Request for Initial Certification

1. An Agency's initial Certification in Construction is normally granted at Level I, but may be higher based on the Agency's demonstrated need and staff qualifications.
2. Agencies desiring an initial certification in construction must submit a written request to the Materials Management Officer. The request shall contain the following information:
 - (a) The proposed certification level.
 - (b) The Agency's building program over the last five years.
 - (c) The Agency's building program projected for the next five years.
 - (d) A list, including the dollar value, of initial design and construction procurements and the contract amendments and change orders that the proposed increased certification level would have allowed.
 - (e) The Agency's organization and staffing (current and proposed, if different) for the management of construction projects, and the support available to the staff.
 - (1) The staff listing shall include both procurement and technical staffs, with resumes showing relevant experience and current registrations, licenses and certifications.
 - (2) The Agency shall identify the individual who will serve as the Agency's building official, the building code enforcement staff or shall describe how code enforcement will be achieved.
 - (f) The Agency shall identify the individual who will serve as the Agency's building official, the building code enforcement staff or shall describe how code enforcement will be achieved. The individual in responsible charge of construction projects is required to have at least one of the following certifications:
 - (1) Architect or Professional Engineer licensed by the State of South Carolina with significant experience is building design and construction;
 - (2) Certified Building Official (ICBO);
 - (3) SBCCI Chief Building Code Analyst; or
 - (4) Other building construction experience acceptable to the OSE.

C. Evaluation of the Request for Initial Certification

1. Audit and Certification will audit the Agency's internal procurement practices and make recommendations based on the following criteria:
 - (a) Demonstrated need for the certification;
 - (b) Estimated number of additional construction-related procurements that the requested certification level would allow;
 - (c) Past audit reports;
 - (d) Evaluation of the Agency's adherence to the procurement code and related regulations with an emphasis on competitive procurement methods; and
 - (e) Qualifications of the staff assigned to the procurement process.
2. The OSE will review the Agency's construction project execution practices and make certification recommendations based on the following criteria:
 - (a) Demonstrated need for the certification;
 - (b) Estimated number of additional construction-related procurements that the requested certification level would allow;
 - (c) Evaluation of compliance with all of the applicable codes as outlined in Chapter 5;
 - (d) Evaluation of the Agency's adherence to the procurement code and related regulations with an emphasis on competitive procurement methods; and
 - (e) Qualifications of the staff assigned to the procurement and code review process.

D. Requests for an Increased Construction Certification

1. Agencies may request to maintain an existing level of certification or an increase to a higher level. A request for an increase in certification should be submitted well in advance of the expiration date for the Agency's current certification to allow time for appropriate review and to avoid delays in the recertification process.
2. A recommendation to maintain an existing level of certification or to increase the current level of certification is based on favorable audit reviews. The reviews will consider the same factors as the reviews for the initial certification as described above.
3. Construction certification at Level III and above requires the agency to possess additional expertise in the areas of building code enforcement. This is to ensure that the agency possesses the resources to properly review more complex designs for code compliance.
 - (a) The individual in responsible charge of building code compliance shall have at least one of the following certifications:
 - (1) Registered Architect or Professional Engineer licensed by the State of South Carolina with significant experience in building design and construction;
 - (2) Certified Building Official (ICBO);
 - (3) SBCCI Chief Building Code Analyst.
 - (b) The agency's building code review staff, including the individual in responsible charge, shall collectively possess the all of the following qualifications:
 - (1) SC registered Architect, or SBCCI Chief Building Code Analyst.
 - (2) SC licensed professional Civil/Structural Engineer, or SBCCI Chief Building Code Analyst.
 - (3) SC licensed professional Mechanical Engineer, or both SBCCI Chief Mechanical and Plumbing Codes Analyst.
 - (4) SC licensed Electrical Engineer, or SBCCI Chief Electrical Code Analyst.

3.7 AUDIT AND RECORD RETENTION REQUIREMENTS

- A. For agencies procuring construction related services within the certification limits granted by the Board, both Audit and Certification and the OSE serve as an audit function.
- B. All procurement records shall be made available to the State Attorney General, OSE and Audit and Certification. Agencies shall retain and dispose of procurement records on all projects in accordance with guidelines approved by the Department of Archives and History.

3.8 PROFESSIONAL SERVICES PROCUREMENTS

- A. All professional services agreements, including Indefinite Delivery Contracts, except for emergency and sole source procurements, shall be approved by the State Engineer.
- B. Only contract forms approved by the OSE may be used to procure professional services, including Indefinite Delivery Contracts.
- C. Procedures for all professional services procurements are found in Chapter 4, except emergency and sole source procurement procedures which are found in Chapter 8.
- D. The OSE is available upon request for assistance in procuring emergency or sole source professional services.

3.9 AMENDMENTS TO PROFESSIONAL SERVICES CONTRACTS

- A. A/E contract amendment certification limits apply to all amendments to professional services agreements, except agreements for emergency and sole source procurements.
- B. Only forms approved by the OSE may be used to amend professional services contracts.
- C. All amendments shall be in accordance with Chapter 4, except amendments to emergency and sole source professional services contracts, which shall be made in accordance with Chapter 8.

- D. Individual Delivery orders issued through a design services Indefinite Delivery Contract may be issued by the Agency without regard to its limit of A/E amendment certification.

3.10 CONSTRUCTION CONTRACTS WITHIN AGENCY CONSTRUCTION CERTIFICATION

- A. Construction contracts whose initial award amount is within Agency construction contract award certification do not require OSE review and approval, and shall be procured by one of the following methods:
 - 1. Contracts valued at \$25,000 or less may be procured as a small purchase in accordance with Chapter 8.
 - 2. Contracts valued in excess of \$25,000 shall be procured by competitive sealed bidding in accordance with Chapter 6.
- B. Individual Delivery Orders issued through a construction Indefinite Delivery Contract that was awarded in accordance with the competitive bidding requirements of Chapter 6 may be issued by the Agency without regard to its limit of construction certification, with the following limitations:
 - 1. The value of the Delivery Order may not exceed the single project limit of \$150,000.
 - 2. If an individual IDC Delivery Order exceeds the level of the Agency's construction award certification, then the plans and technical specifications shall be submitted to OSE for building code review and approval.

NOTE: For more information on Indefinite Delivery Contracts, see Appendix E.

- C. All contracts determined by the agency to be emergency or sole source shall be procured in accordance with Chapter 8. Certification limits do not apply to emergency and sole source procurements. If an emergency or sole exceeds the level of the Agency's construction award certification, then the plans and technical specifications should be submitted as soon as possible to OSE for building code review and approval.

3.11 CONSTRUCTION CONTRACTS EXCEEDING AGENCY CONSTRUCTION CERTIFICATION

Construction contracts exceeding agency construction contract award certification, other than emergency or sole source, shall be reviewed and approved by the OSE, and procured by one of the following methods:

- A. Contracts valued at \$25,000 or less may be procured as a small purchase in accordance with Chapter 8.
- B. Contracts valued in excess of \$25,000 shall be procured by competitive sealed bidding in accordance with Chapter 6.

3.12 PROJECTS WITH BIDS EXPECTED TO EXCEED AGENCY CONSTRUCTION CERTIFICATION WITH A RESPONSIVE BID WITHIN CERTIFICATION

- A. When the lowest responsive and responsible bid for a construction project is within the agency construction contract award certification, the agency may:
 - 1. Continue the project as if the bid exceeds certification; or
 - 2. Notify the OSE in writing that the agency chooses to award and monitor the construction contract under its own authority.

NOTE: OSE recommends this option only if there is a high likelihood that the project will remain under the limit of the agency's construction certification.

- B. The OSE shall continue to be available for consultation at the agency's request if the project is to be administered within the agency construction certification.

3.13 PROJECTS WITH BIDS EXPECTED TO BE WITHIN AGENCY CONSTRUCTION CERTIFICATION WITH THE LOWEST RESPONSIVE BID EXCEEDING CERTIFICATION

- A.** When a project is estimated and bid within agency construction contract award certification, and the lowest responsive and responsible bid exceeds the agency certification, the contract award requires approval from the State Engineer.
- B.** The agency shall submit the following documentation for contract approval by the State Engineer:
 - 1.** A copy of the approved Form A-1, if the project is required to be established as a PIP;
 - 2.** A letter of explanation as to why the project was expected to be within certification;
 - 3.** Detailed cost estimate;
 - 4.** A copy of the *SCBO* advertisement, if required;
 - 5.** Bidding documents, including all addenda; and
 - 6.** An SE-380, with all of the backup information listed on the bottom of the form.
- C.** The project shall be considered, with respect to reviews and approvals, as exceeding the agency construction contract award certification for the remainder of the project.

3.14 CHANGE ORDERS TO CONSTRUCTION CONTRACTS

- A.** Change orders to construction contracts shall be in accordance with Chapter 7.
- B.** When a change order to a contract awarded within agency construction contract award certification increases the contract amount above the agency certification, then the change order requires approval by the State Engineer. Refer to Chapter 7.

3.15 IN-HOUSE CONSTRUCTION PROJECTS

- A.** In-house construction projects are defined as projects that do not use an outside contractor(s) or subcontractor(s) and all labor is supplied by the agency's own forces.
- B.** All in-house projects are required to comply with the cost limits and licensing requirements of the SC Contractors' Licensing Board.
- C.** Procurements for construction related professional services for in-house construction projects shall be made in accordance with Chapter 4.
- D.** The actual cost of both labor and materials shall be used to determine if the project exceeds the agency construction certification and to determine the review and approval requirements by the OSE.
- E.** Individual procurements of construction materials or equipment in excess of agency goods and services certification shall be made through the State Procurement Office or through a state contract. Further interpretation on these requirements should be obtained from the State Procurement Office.

3.16 CERTIFICATION VIOLATIONS

- A.** Any procurement that violates an Agency's certification limits is an unauthorized procurement that must be ratified in accordance with Regulation 19-445.2015. The ratification process is described in Chapter 1 of this Manual.
- B.** Certification may be suspended, reduced, or revoked by the Board for violations of the procurement code, regulations or procedures.

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